

LEGAL EDUCATION IN A GLOBAL CONTEXT

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I. INTRODUCTION

A critical leadership issue in legal education in the next decade is international legal education¹ and, more particularly, the extent to which law schools in the United States through their faculty and curricula will respond to the reality of an increasingly interconnected global community. From the perspective of someone who has studied law in several jurisdictions and has taught law in many places, the advantages and benefits of a curriculum and approach that increases a student's exposure to and understanding of international and comparative law appears to be self-evident. It is therefore surprising that this is by no means a position that is universally accepted nor embraced—indeed, strong arguments are advanced in academia and within the profession suggesting that any attention to international legal education is of limited practical or educational value.² I argue that a dean has a responsibility and leadership role to counter more insular perspectives and to develop strong international and comparative programs. There are, of course, many arguments that may be advanced in support of this position. I address only two in detail—the reality of a global market and a concern about isolationism. These considerations are of particular significance from my perspective both in my daily interactions with law students and the legal community and in the broader sense of responsible stewardship relative to long-term planning.

II. A GLOBAL MARKET

Proponents of globalization see a global free market and democratic capitalism as having the capacity to transform the world into a more stable, peaceful, and prosperous place.³ Conversely, others like Amy Chua see the global spread of markets and democracy as “a principal, aggravating cause of group hatred and ethnic violence throughout the non-western world.”⁴ Regardless of whether one is

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1. International legal education in this paper is taken to include international law, comparative law and courses that cover interactions between private citizens of different states or between a state and citizens of a different state. Included under this umbrella are courses on international intellectual property law, international business transactions law, international tax law, and international dispute resolution. For a full discussion, see John A. Barrett, Jr., *International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society*, 12 AM. U.J. INT'L L. & POL'Y 975, 975-79 (1997).

2. See, e.g., Claudio Grossman, *Building the World Community: Challenges to Legal Education and the WCL Experience*, 17 AM. U. INT'L L. REV. 815, 817 (2002); James Gordley, *Comparative Law and Legal Education*, 75 TUL. L. REV. 1003, 1007 (2001).

3. See, e.g., THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* 7 (2000).

4. See AMY CHUA, *WORLD ON FIRE: HOW EXPLOITING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY* 9 (2003).

a proponent or opponent of globalization, there is no doubt that the social, political, and economic consequences of globalization are a reality and must be understood and addressed.

Financial services, telecommunications, manufacturing, e-commerce, and investments are all areas where globalization is entrenched, and globalization continues to grow at a rapid rate. The migration of manufacturing jobs, software development positions, and other employment opportunities from the United States to other countries with lower labor costs are reported daily. China is already "in quantity, one of the major importers and exporters in the world and in a few years, again in quantity and not *per capita*, it will be one of the major economies in the world."⁵ Of particular note is the fact that 25% of China's largest exporters are U.S. corporations and that China has become the United States' second largest trading partner.⁶ Major banks, insurers and reinsurers operate on a global basis,⁷ and e-commerce is no respecter of national boundaries. The global financial services market will continue to experience major growth fueled through mergers and acquisitions.⁸ The factors underpinning such growth and consolidations are varied but achieving sufficient size to maximize economies of scale and to be competitive in international markets, spreading human resources and product development costs over a bigger customer base, broadening risk exposures over different geographic regions, and spreading and sustaining information technology expenditures are all key factors.⁹

The existence of this global market and globalization cannot be ignored by any law school. The school of thought that contends that "the transformations that are taking place are of minimal concern because lawyers are primarily concerned with domestic issues"¹⁰ confined within one nation's borders is patently untenable. The rapid increase in the volume and diversification of international business transactions and international trade, technology transfer, and the international development of investment funds¹¹ make it imperative that law students acquire an international perspective and understanding of law in a global context. The domestic insularity in which many lawyers in the past could practice their profession is not, in my opinion, sustainable as the inter-connectedness between countries grows. This inter-connectedness extends, of course, beyond the bounds of commerce to embrace cases and transactions involving international environmental and human rights issues and to matters as diverse as international adoptions and war crimes. Even areas of law with a strong domestic focus such as

5. See Wolfgang Deckers, *China, Globalization and the World Trade Organization*, 34 J. CONTEMP. ASIA 102, 104 (2004); *Multinationals in China*, BEIJING REV., Sept. 20, 1999, at 16-19.

6. Ernesto Zedillo, *Self Inflicted China Syndrome*, FORBES, Dec. 22, 2003, at 45.

7. For example, General Re and Cologne Re operate in almost 150 countries. See generally GENERAL RE CORPORATION 2003 ANNUAL REPORT.

8. See KPMG INSURANCE INDUSTRY SURVEYS 1997-2002 (Sydney, Australia).

9. See generally J. David Cummins et al., *Consolidation and Efficiency in the U.S. Life Insurance Industry* (The Wharton School, University of Pennsylvania, Working Paper Series (May 29, 1998)).

10. Grossman, *supra* note 2, at 817.

11. See John A. Barrett, *International Legal Education in the United States: Being Educated for Domestic Practice While Living in a Global Society*, 12 AM. U. J. INT'L L. & POL'Y 975, 981-83 (1997).

family law, estate planning, and criminal law are increasingly the subject of international conflict and complications.

III. ISOLATIONISM

Another strong reason to promote and inculcate international and comparative law into any curriculum is to counter isolationism. This is especially important at this time. Recently, twenty-five leading scientific, engineering, and educational institutions, claiming to represent 95% of the American research community, sent a statement to the Bush Administration and Congress urging prompt action to ease security and visa measures that have had a major impact upon the flow of students and scientific talent into the United States. They stated that “[i]f the red tape is not untangled soon, it could cause long term harm to America’s universities and high tech industries.”¹² The security concerns and resulting visa restrictions and processes in the aftermath of the tragic events of September 11 have had the unfortunate effect of reducing the level of interaction between citizens of this country and the rest of the world. This is particularly unfortunate as such interactions bring not only intellectual benefits but enhance the opportunity for U.S. citizens to better understand other societies and cultures and, in turn, themselves. As a very recent Harvard University review of its undergraduate curriculum recommended, “[t]here is a responsibility to educate students—who will live and work in all corners of the globe—as citizens not only of their home country, but also to see themselves, and this country, as others see them.”¹³ This broader vision is expressed also by the Honorable J. Clifford Wallace, who advocates a greater globalization of judicial education to better understand foreign laws and to borrow or adapt foreign laws where appropriate to interpret domestic laws and to solve new problems.¹⁴ One might add, in relation to certain activities such as child pornography on the internet or the regulation of biotechnology developments such as human cloning, a collaborative response transcending any one legal system is required in order to achieve an effective outcome.

Another relevant consideration going to isolationism is the tension that exists between unilateralism and multilateralism¹⁵ in the conduct of international affairs.

12. *A Visa Quagmire*, N.Y. TIMES, May 17, 2004, at A20. See also Robert M. Gates, *International Relations 101*, N.Y. TIMES, Mar. 31, 2004, at A23.

13. Sara Rimer, *Committee Urges Harvard to Expand the Reach of Its Undergraduate Curriculum*, N.Y. TIMES, April 27, 2004, at A19 (quoting William C. Kirby, Dean of the Faculty of Arts and Sciences).

14. Hon. J. Clifford Wallace, *Globalization of Judicial Education*, 28 YALE J. INT’L L. 355, 360 (2003). Judge Wallace comments:

The legal community is globalizing. With the United States as the most notable exception, judges increasingly look to foreign law in interpreting their law and solving new problems. For instance, a recent Namibian case relied on decisions from India, the United States, Canada, England, Malaysia, South Africa, and the European Court of Human Rights to interpret its constitutional guarantee of equality.

Id.

15. See JOHN GERARD RUGGIE, *CONSTRUCTING THE WORLD POLITY* 109 (1998) (“Multilateralism

There are serious concerns that the United States in acting unilaterally on issues such as the war in Iraq, while seeking support from a "coalition of the willing" where necessary, is becoming increasingly isolated.¹⁶ Lawyers should be able to contribute meaningfully to the debate about a fundamental issue like this and other matters affecting their country and their community. Those who have no background in international law and the notions of collective security implicit within the United Nations framework are ill-equipped to make informed comment that might guide their communities and constituencies to better reasoned decisions and outcomes. To those critics who would respond that this is not a lawyer's responsibility, I would share with them the comments by Associate Justice Anthony Kennedy of the U.S. Supreme Court on the opening soon after September 11 of the new Indiana University Law School building in Indianapolis.¹⁷ He observed that lawyers are well versed in the rule of law, but are seldom advocates for it. He urged very strongly that this more proactive responsibility be discharged in the interests of our community and communities everywhere. Similarly, and with respect, I would suggest that a well prepared law student should have a good sense of a broader responsibility to the community; a part of that responsibility is, I contend, a capacity to provide guidance of legal issues that affect that community generally. An important aspect of that debate goes to issues such as the PATRIOT Act 2001, the role of the United Nations and unilateral action by member states, and the freedom and security of individuals.

IV. CONCLUSIONS AND RECOMMENDATIONS

As mentioned in the introductory comments to this short essay, there are numerous other factors and considerations that bear upon the merits of enhanced study and understanding of international and comparative law. These include the benefits of exposing lawyers trained in the common law to the more "panoramic view" espoused by the continental or civil law traditions,¹⁸ the pragmatic advantages comparative study affords in providing a framework for more lateral problem solving,¹⁹ and the development of a greater cultural awareness and sensitivity in dealing with diverse communities and diversity itself.²⁰

is an institutional form which coordinates relations among three or more states on the basis of 'generalized' principles of conduct.").

16. See A.J.R. Groom, *The United States and the United Nations: Some Revolting European Thoughts*, 6 J. INT'L REL. & DEV. 120, 136 (2003).

17. U.S. Supreme Court Associate Justice Anthony Kennedy, Speech at the Indiana University School of Law (Sept. 21, 2001).

18. See Luz Estella Nagle, *Maximizing Legal Education: The International Component*, 29 STETSON L. REV. 1091, 1093 (2000).

19. See, e.g., Anthony A. Tarr & Julie-Anne Tarr, *Some Critical Issues Affecting Insurance Transactions Globally*, 2001 J. BUS. L. 661, 664-68 (explaining the codification of insurance laws in Europe has involved a complex marriage of common law and civil law principles and practices); Beverly May Carl, *Conflicts of Law: An Appeal for Revival of its Multinational Character*, 26 J. LEGAL EDUC. 495 (1974).

20. See Roger J. Goebel, *Professional Qualification and Educational Requirements for Law Practice in a Foreign Country: Bridging the Cultural Gap*, 63 TUL. L. REV. 443, 451 (1989).

Assuming an acceptance of the argument that there should be a stronger focus upon and understanding of law in a global context, what steps are necessary to achieve this outcome? Aline Grenon and Louis Perret comment:

Law schools clearly have a duty to ensure that *all* their students receive a legal education which will prepare them to cope effectively with the challenges of legal practice in the 21st century. The following are ways by which this goal could be reached:

- (a) Law schools could try to promote more effectively their international and comparative law courses; for example, efforts could be made as early as orientation week in first year law to sensitize students to the need to acquire knowledge in these fields.
- (b) Law schools could make some international and comparative law courses compulsory.
- (c) Finally, law schools could ensure that law courses dealing with national and [state] law systematically include an international law component.²¹

There is no problem with these proposals from my perspective. The incorporation of international and comparative law components into traditional domestic law courses is an effective, albeit minimalist, way to extend knowledge and awareness of relevant international and comparative legal principles and issues. It is difficult to conceive of any justification, for example, for domestic courses on contracts and sale of goods ignoring the U.N. Convention on Contracts for the International Sale of Goods (CISG).

Regarding compulsory courses, though, I would advocate one compulsory 3-credit survey course in international law (that includes international institutions and international human rights components) and one compulsory 3-credit comparative law course that covers selected issues from the perspective of the common law, the civil law, and one Asian legal system.²²

There are, of course, other ways in which law students acquire international understanding, experience, and knowledge of foreign laws and legal systems. Advanced degree programs, exchange and summer abroad programs, international moot court competitions, such as the Willem C. Vis International Commercial Arbitration Moot in Vienna,²³ and participation on international and comparative law reviews all provide valuable insights and experience. There is, however, no substitute for the formal study of international and comparative law, and I contend, therefore, that the compulsory study of the two courses mentioned above is central to a reasonable exposure to these fields.

21. Aline Grenon & Louis Perret, *Globalization and Canadian Legal Education*, 43 S. TEX. L. REV. 543, 553 (2002).

22. Although the American Bar Association and the American Society of International Law have urged at various times that the study of international law be compulsory, this is not supported by a majority of teachers of international law, and it would require a reallocation of resources or new hiring at a time of scarce resources. See Barrett, *supra* note 11, at 997.

23. This moot exercise, organized by Pace University School of Law, is a wonderful learning experience for students from over 110 universities worldwide.

The appetite for an extension and enhancement of international and comparative legal study at U.S. law schools is not great. The survey conducted by the American Bar Association regarding internationalization at U.S. law schools²⁴ in 1996 reveals that the percentage of students graduating with at least one completed international course is, at most, 37%.²⁵ In relation to the question about incorporation of international and comparative law issues into domestic law courses, only twenty-seven schools responded, with only one school indicating that most of its faculty include such a component.²⁶ These results are not surprising given the remarkably homogenous faculty recruitment practices adopted by law schools in the United States. In a recent article, Richard Redding analyzed the demographic characteristics and law school accomplishments of the 443 new law teachers hired between 1996 and 2000.²⁷ He reports: "While law faculties have become more and more diverse in race and gender, there has not been a similar increase in the diversity of new law teachers' educational backgrounds. If anything, the trend is toward less diversity."²⁸ The dominant characteristics of newly-hired faculty are predictable—a degree from an elite U.S. law school, membership on a law review, judicial clerkship (usually federal), publication of one law review article or note, and a short time in legal practice.²⁹ This "cookie-cutter" model is not a formula for innovation and change, nor does it bring to the academy and to law students the variety of training and experience³⁰ necessary to challenge conventional wisdoms. A more expansive recruitment approach embracing the integration of scholars from Europe, China, and other parts of the world—in much greater numbers than are currently in U.S. law schools—will enhance the diversity of faculty, enrich debate on comparative legal issues and problems, and give students a broader exposure to different legal systems and paradigms.

In conclusion, law schools that take the lead in preparing their students more effectively for the reality of a global market and an interconnected world will not only do their students a great service, but their reputations will be greatly enhanced within the communities they serve and amongst their peers. The new *lex mercatoria*³¹ evolving out of the rapid increase in the volume and diversification of international business transactions, the electronic trading, clearing and settlement of investment securities, and new technology developments will in the future, as in the past, meet the needs of the national and international business community. These needs and other non-commercial needs do not stop at national or state borders. Law schools training lawyers to service these needs should also embrace

24. See Barrett, *supra* note 11, app. at 1001-13 (reporting results).

25. *Id.* at 1006.

26. *Id.* at 995.

27. Richard E. Redding, *Where Did You Go to Law School? Gatekeeping for the Professoriate and its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 599 (2003).

28. *Id.* at 606.

29. *Id.* at 612.

30. ASSOCIATION OF AMERICAN LAW SCHOOLS (AALS) HANDBOOK Bylaws, art. 6 § 6-5(c) (2003) (requiring law faculties reflect a "breadth, depth, and variety of . . . training and experience").

31. See JAN H. DALHUISEN, DALHUISEN ON INTERNATIONAL COMMERCIAL, FINANCIAL AND TRADE LAW viii (2000). See generally J.E. Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL EDUC. 329 (1996).

a broader vision that extends beyond a consideration of domestic law. This vision should, in my opinion, include a strong international and comparative law perspective in the treatment of all issues and problems. This is a major leadership consideration for law school deans and one that cannot be neglected. The world is changing very rapidly, and it is myopic to continue using the same recipes, the same menu, and the same chefs without recognizing the inherent value that incorporating readily available and valuable resources now present.